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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,180	10/11/2006	Ken Shortman	19975	4755
272 7590 06/16/2010 SCULLY, SCOTT, MURPHY & PRESSER, P.C. 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
LONG, SCOTT				
ART UNIT		PAPER NUMBER		
1633				
MAIL DATE		DELIVERY MODE		
06/16/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/584,180

Applicant(s)

SHORTMAN ET AL.

Examiner

SCOTT LONG

Art Unit

1633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-7-10 and 13-30.
Claim(s) withdrawn from consideration: 13-29.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/SCOTT LONG/
Primary Examiner, Art Unit 1633

Continuation of 11, does NOT place the application in condition for allowance because:

The applicant has requested reconsideration of the rejection of claim 1, 7-10 and 30 under 35 USC 103 as unpatentable over Maraskovsky in view of Morel. The applicant's arguments have been entered, but they fail to overcome the rejection of record.

The applicant does not dispute that Maraskovsky et al. teaches the active method steps of the instant claims, that is "in vivo administration of Flt3L increases CD8alpha expressing dendritic cells in mice and that Maraskovsky teaches dendritic cells induce immune tolerance and are useful for preventing diabetes. The applicant also does not dispute that Morel teaches that a subset of DC cells can be used to prevent diabetes in animal models.

However, the applicant argues that the combination of references teaches away from the instant invention. Contrary to the applicant's assertion, the cited art teaches that Flt3 increases CD8alpha+ dendritic cells in animals treated solely with Flt3 and further indicates that dendritic cells can be used to prevent diabetes in animal models. In particular, the applicant argues that "Morel teaches away from the invention by disclosing that CD8- mature DCs prevent diabetes" and further suggests the cited art does not suggest the claimed method of "administ[er]ing Flt3 ligand in vivo in order to delay the onset of diabetes (Remarks, page 4). Contrary to the applicant's assertion, Morel teaches DC cells are increased by administration of Flt-3L (page 4, col.2) and immune tolerance is induced in mice by CD8alpha+ dendritic cells (page 2, col.1). Furthermore, the person of ordinary skill in the art would have been motivated to administer Flt-3L to a subject to delay onset of diabetes. Maraskovsky teach injection of Flt-3L into mice increases the population of CD8+ dendritic cells. Morel et al. teach the relevance of an increased subpopulation of CD8+ dendritic cells to inducing immune tolerance for delaying the onset of diabetes. Therefore, a skilled artisan would conclude one could delay the onset of diabetes by inducing immune tolerance through increasing a subpopulation of CD8+ dendritic cells by administering Flt-3L to subjects predisposed to diabetes. The nexus between the arts is the increase in CD8+ dendritic cells. Once a skilled artisan is aware of the need to increase the number of CD8+ dendritic cells in order to induce immune tolerance which delays the onset of diabetes, a skilled artisan would be guided by Maraskovsky to treat the subject by administering Flt-3L, which has been proven to increase the population of CD8+ dendritic cells. Accordingly, the examiner finds the applicant's arguments unpersuasive.

The applicant further directs the attention of the examiner to Naumov page 13842, right column, 2nd parag from bottom (Remarks, page 3) to support the applicant's view that Morel only provides support for CD8- DCs preventing diabetes. However, Naumov teach that myeloid dendritic cells isolated from pancreatic lymph node protects female NOD mice from developing diabetes (Fig 5) and further indicates that dendritic cells found in the pancreatic lymph node are CD8alpha+ (page 13842, col.1, lines 1-2 of first partial paragraph). Therefore, Naumov seems to provide the skilled artisan with further understanding that that CD8alpha+ dendritic cells can be used to prevent diabetes. Accordingly, the examiner finds the applicant's arguments unpersuasive.

Therefore, the pending claims remain rejected for the reasons of record.